

2001 DRAFTING REQUEST**Bill**

Received: 02/22/2001

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Robert Welch (608) 266-0751

By/Representing: Chris Newhouse

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Employ Priv - child labor

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Child hours of labor exception for Christmas tree farms

Instructions:

Permit minors to work in excess of the maximum hours of labor on Christmas tree farms during the peak season.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 02/22/2001	jdye 02/23/2001		_____			State
/1			pgreensl 02/27/2001	_____	lrb_docadmin 02/27/2001		State
/2	malaigm	jdye	martykr	_____	lrb_docadmin	lrb_docadmin	

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<u>Vers:</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/05/2001	03/06/2001	03/06/2001	_____	03/06/2001	04/12/2001	

FE Sent For:

<END>

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/1			pgreensl 02/27/2001		lrb_docadmin 02/27/2001		State
/2	malaigm 03/05/2001	jdye 03/06/2001	martykr 03/06/2001		lrb_docadmin 03/06/2001		

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Page 1

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/1		1/2 3/6 jld	pgreensl 02/27/2001		lrb_docadmin 02/27/2001		

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1?	malaigm	1 2/23 jld	2/27 pg	2/27 self			

FE Sent For:

<END>

guardian employing their own children not more than 6 days per week, except in street trades; 4 hours per day, except 8 hours per day on the last school day of the week and other non-school days, 18 hours per calendar week, while their respective school is in session, or 24 hours per calendar week while their respective school is in session less than 5 days per week, 8 hours per day or 40 hours per calendar week during the weeks they are not required to attend school on any day of the calendar week.

(b) Minors 14 and 15 years of age may be employed not more than 6 days per week, except in street trades and agriculture; 4 hours per day except 8 hours per day on the last school day of the week and other non-school days, 18 hours per calendar week, while their respective school is in session, or 24 hours per calendar week while their respective school is in session less than 5 days per week, 8 hours per day or 40 hours per calendar week during the weeks they are not required to attend school on any day of the calendar week.

(c) Minors 16 and 17 years of age may be employed not more than 6 days per week, except in street trades, agriculture, and canning and freezing establishments, and as station captains or delivery clerk incidental to street trades; 5 hours per day except 8 hours per day on the last school day of the week and other non-school days, 26 hours per calendar week while their respective school is in session, or 32 hours per calendar week while their respective school is in session less than 5 days per week.

(d) Minors 16 and 17 may be employed in excess of the permitted hours of labor per day and per week in weeks when they are not required to attend school provided the employer pays overtime as provided under the employer's pay plan to other workers, but in no case shall the payment be less than time and one-half their regular rate of pay for all overtime hours worked over 10 hours per day or over 40 hours per week whichever is greater, but in no case may minors 16 and 17 years of age be employed more than 50 hours per week. This exception shall not be interpreted to permit a minor to work more than 8 hours per day on Saturday, Sunday or other days during the week when the minor is required to attend school on any day of that week.

(e) Florists may employ minors 16 and 17 years of age in excess of the permitted hours of labor per day and per week on a voluntary basis during the 3-day period prior to Valentine's Day, Easter, Mother's Day, Memorial Day, and Christmas. During these peak periods, time and one-half the regular rate of pay must be paid for all overtime hours worked per day or per week whichever is greater as follows:

1. To minors 16 and 17 years of age working over 8 hours a day, 40 hours a week during the hours they are not required to attend school when their respective school is in session.

2. This does not exempt florists employing minors under this order from complying with the time-of-day restriction specified in sub. (2).

(f) Minors 14 through 17 years of age may be employed in agricultural pursuits in excess of the permitted hours of labor per week during peak periods. During these peak periods, time and one-half the regular rate of pay must be paid for all over-time hours worked over 50 hours per week. Minors 14 through 17 years of age may work over the permitted hours of labor of 50 hours a week during the hours they are not required to attend school when their school is in session.

(g) In court-ordered restitution or community services programs, minors 12 or 13 years of age may be employed or perform any duties under circumstances in which a minor 14 or 15 years of age is permitted to be employed or permitted to work as provided under ss. DWD 270.05 and 270.06.

Note: See s. 48.34 (5), (6) and (9) (a), Stats.

(h) Hours worked as part of a work experience program during school hours will not count as part of the total permitted hours of work per day or per week.

(2) TIME OF DAY RESTRICTIONS. (a) Minors 12 and 13 years of age may be employed in agricultural pursuits, domestic employment, school lunch programs, caddies on a golf course and for parents or guardians employing their own children not before 7:00 a.m. on any day, nor after 8:00 p.m. on days preceding school days and not later than 9:30 p.m. on days not preceding school days. Except in agriculture, they may start at 5:00 a.m.

(b) Minors 14 through 15 years of age may not be employed before 7:00 a.m. on any day, nor after 8:00 p.m. on days preceding school days and not later than 11:00 p.m. on days not preceding school days, except in agriculture they may start at 5:00 a.m.

(c) Minors 16 and 17 years of age may not be employed before 7:00 a.m. on school days nor before 5:00 a.m. on non-school days, nor after 11:00 p.m. on days preceding school days, nor after 12:30 a.m. on days not preceding school days except that in agriculture they may start at 5:00 a.m. During non-school weeks, the time of day is not regulated except between the hours of 12:30 a.m. and 5:00 a.m. they shall be under direct supervision and they shall receive at least 8 consecutive hours of rest between the ending of work and the beginning of work the next day, except in agriculture adult supervision is not required. This paragraph shall not apply to minors employed in street trades nor as station captains or delivery clerks incidental to street trades.

(d) Minors may not be employed during the hours they are required to attend school as defined in s. 118.15, Stats., nor contrary to local curfew ordinances establishing an earlier restriction.

(3) MEAL PERIODS. At least 30 minutes shall be allowed for each meal period reasonably close to the usual meal period time, namely 6:00 a.m.; 12:00 noon; 6:00 p.m.; 12:00 midnight or at such other times as deemed reasonable by the department. In no case shall a minor be employed or permitted to work more than 6 consecutive hours without a meal period.

(4) HIGH SCHOOL GRADUATES OR OTHER MINORS WHO ARE EMANCIPATED, LIVING INDEPENDENTLY, HEAD OF HOUSEHOLD, ENROLLED IN A GENERAL EQUIVALENT DIPLOMA PROGRAM AT A VOCATIONAL OR TECHNICAL COLLEGE OR ENROLLED IN HOME SCHOOL. (a) Minors 16 and 17 years of age, who are high school graduates may be employed the same daily and weekly hours and time of day as adults.

(b) Minors 16 and 17 years of age, who are emancipated, living independently, head of household or enrolled in a general equivalent diploma program at a vocational or technical college may work up to 40 hours per week during the weeks public schools are in session and up to 50 hours per week during non-school weeks. The daily hour limits and time of day restrictions do not apply.

(c) Minors 16 and 17 years of age, who are enrolled in home school may work up to 26 hours per calendar week during the weeks the public schools are in session or 32 hours per calendar week if the public schools are in session less than 5 days per week and up to 50 hours per calendar week during non-school weeks. The daily hour limits and time of day restrictions do not apply.

(5) "Day" means a calendar day.

(6) "Week" means a calendar week or a regular reoccurring period of 168 hours in the form of 7 consecutive calendar days.

History: Cr. Register, February, 1974, No. 218, eff. 3-1-74; am. (1) (c) and (2) (a) and (b), r. (1) (c) 3. a. to e., renum. (1) (c) 3. f. to j. to be 3. a. to e., Register, September, 1980, No. 297, eff. 10-1-80; am. (1) (a) and (b), cr. (5) and (6), Register, April, 1983, No. 328, eff. 5-1-83; am. (1) (c), Register, April, 1985, No. 352, eff. 5-1-85; r. (1) (a) and (b), renum. (1) (c) to (e), (2) (a) to (c) to be (1) (d) to (f), (2) (b) to (d) and am. (1) (d), (f) and (2) (b) and (c), cr. (1) (a) to (c), (2) (g) and (h), (2) (a), am. (5) and (6), Register, December, 1991, No. 432, eff. 1-1-92; am. (1) (a), (b), (c), (e) 1., (2) (c) and (4) and cr. (4) (b) and (c), Register, April, 1995, No. 472, eff. 5-1-95; correction in (2) (g) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 270.06 Minimum age for hazardous employment. The employments and places of employment designated herein shall be deemed to be dangerous or prejudicial to the life, health, safety, and/or welfare of minors under the ages specified, and their employment may be dangerous or prejudicial to the life,

LABOR

FAIR LABOR STANDARDS

29 USCS § 203, n 402

20 CCH LC ¶ 66531, revd on other grounds (1954, CA9 Hawaii) 216 F2d 466, 25 CCH LC ¶ 68404, 26 CCH LC ¶ 68645, revd on other grounds (1955) 349 US 254, 99 L Ed 1040, 75 S Ct 719, 28 CCH LC ¶ 69224.

Purchase, keeping and ultimate sale of rabbits to be used in laboratory experiments is not exempt from Fair Labor Standards Act as raising of fur bearing animals merely because majority of animals are rabbits. *Beck v Southern Rabbit Corp.* (1966, ND Ga) 248 F Supp 1005, 53 CCH LC ¶ 31769.

Employees engaged in Christmas tree production do not qualify for agricultural overtime exemption since Christmas trees are not agricultural or horticultural commodities. Wage and Hour Opinion Letter No. 1706 (1/9/91), CCH Wage-Hour Admin Rulings ¶ 32011.

VI. OPPRESSIVE CHILD LABOR

401. Generally

The child-labor provisions are independent prohibitions, not limited to operations in situations where child labor has harmful effects on maintaining the minimum wage rates but working entirely independently of such consequences. *Gemsco, Inc. v Walling* (1945) 324 US 244, 89 L Ed 921, 65 S Ct 605, 9 CCH LC ¶ 51195.

Duty of the courts to enforce the child-labor provisions is not affected by the presence or absence of special profit or advantage through its violations. *Lenroot v Interstate Bakeries Corp.* (1945, CA8 Mo) 146 F2d 325, 9 CCH LC ¶ 62467.

The determination of the public interest in child labor in mechanized industries is for Congress, and the determination of Congress is binding on the courts. *Lenroot v Interstate Bakeries Corp.* (1945, CA8 Mo) 146 F2d 325, 9 CCH LC ¶ 62467.

Fair Labor Standards Act places responsibility for its administration of child labor provisions on courts as well as on the Children's Bureau, and courts should not treat lightly this responsibility. *Lenroot v Kemp* (1946, CA5 Miss) 153 F2d 153, 10 CCH LC ¶ 62925.

The purposes of the child-labor provisions were both economical and sociological. *Lenroot v Interstate Bakeries Corp.* (1944, DC Mo) 55 F Supp 234, 8 CCH LC ¶ 62143, mod on other grounds (1945, CA8 Mo) 146 F2d 325, 9 CCH LC ¶ 62467.

402. Hazardous occupations

Children employed as helpers on trucks, and in moving, with aid of mechanical jacks, barrels of condensed milk weighing from 400 to 600 pounds are employed in "hazardous occupations." *Lenroot v Interstate Bakeries Corp.* (1945, CA8 Mo) 146 F2d 325, 9 CCH LC ¶ 62467.

An employer's violation of 29 USCS § 203(l) by assigning a 16-year-old boy to operate a forklift truck, despite an order by the Secretary of Labor declaring the operation of a high lift forklift truck to be a "particularly hazardous" occupation for employees under 18, does not give rise to a federal cause of action for damages for the boy's wrongful death while driving the truck. *Breitwieser v KMS Industries, Inc.* (1972, CA5 Ga) 467 F2d 1391, cert den (1973) 410 US 969, 35 L Ed 2d 705, 93 S Ct 1445.

Operation of power drill is within "hazardous" occupation classification of Department of Labor which regulation proscribes employment of minors between 16 and 18 years of age in operation of power-driven wood-working machines. *Hodgson v Cactus Craft of Arizona* (1973, CA9 Ariz) 481 F2d 464.

Employment of minor between age of 16 and 18 constitutes "oppressive child labor" where, in production of hamper tops, minor is permitted to operate circular saw in violation of Hazardous Occupation Order No. 5. *Mitchell v Thaxton* (1958, DC Ga) 34 CCH Lab Cas ¶ 71313.

Minor under age of 18 is precluded from lawfully working as motor vehicle driver's helper by Hazardous Occupation Order No. 2. *Mitchell v Howard* (1959, DC Ga) 37 CCH Lab Cas ¶ 65554.

Employment of lumber stacker before he is 18 years of age constitutes oppressive child labor and violates regulations of Secretary of Labor relating to hazardous occupations. *Mitchell v Del-Cook Lumber Co.* (1960, DC Ga) 40 CCH Lab Cas ¶ 66531, mod on other grounds (DC Ga) 40 CCH Lab Cas ¶ 66532, adjudication in contempt (DC Ga) 48 CCH Lab Cas ¶ 31519.

Employment of 17-year-old in helping to haul, by truck, scrap metal sold to local dealers for subsequent shipment in interstate commerce, constitutes employment in hazardous occupation and "oppressive child labor," as defined in 29 USCS § 203(l) and violates regulations promulgated pursuant thereto. *Goldberg v Fritschy* (1961, WD NC) 198 F Supp 743, 43 CCH LC ¶ 31189, revd on other grounds (1962, CA4 NC) 309 F2d 152, 46 CCH LC ¶ 31345, on remand (1964, WD NC) 50 CCH LC ¶ 31609.

Employment of minors between 16 and 18 years old in splitting, sorting, piling and loading of rocks extracted from earth to be sold as building materials in interstate commerce constitutes "oppressive child labor," since such employment is in violation of Hazardous Occupations Order No. 9 dealing with occupations in connection with mining, other than coal. *Goldberg v Fuller* (1962, DC Utah) 44 CCH Lab Cas ¶ 31255.

Oil distributor's employment of his son between 16 and 18 years of age in occupation of motor vehicle driver and helper is proscribed by Hazardous



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2619/11

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- 1 AN ACT ...; relating to: the hours that a minor[✓] 14 years of age or over may be
2 employed in Christmas tree farming.

Analysis by the Legislative Reference Bureau

Under the current state child labor law, the department of workforce development (DWD)[✓] may fix maximum hours of employment for minors per day and per week. Under that authority, DWD has promulgated rules permitting a minor 12 to 15 years of age to work for four hours on a school day, eight hours on a nonschool day or on the last day of a school week, 18 hours during a school week, 24 hours during a week in which the minor's school is in session less than five[✓] days, and 40^{*} hours during a nonschool week; and permitting a minor 16 or 17 years of age to work for five hours on a school day, eight hours on a nonschool day or the last day of a school week, 26 hours during a school week, 32 hours during a week in which the minor's school is in session less than five days, and 50 hours during a nonschool week; except^{*} that a minor 14 years of age or over may be employed in agricultural pursuits in excess of those maximum hours per week during peak periods.

Regulations issued under the federal Fair Labor Standards Act[✓] (FLSA), which governs employers that are engaged in interstate commerce, that is, employers that produce goods for sale outside their state and whose annual gross sales are \$500,000 or more, contain similar restrictions on the maximum hours that a minor may work and a similar exception for minors 14 years of age or over employed in agriculture. According to a Wage and Hour Opinion Letter issued by the federal[✓] secretary of labor, however, that exception for employment in agriculture does not apply to work on a Christmas tree farm because Christmas trees are not agricultural commodities as that term is used in the definition of "agriculture" in the FLSA.

This bill defines "agriculture" for purposes of the state child labor law to include the planting, cultivating, growing, harvesting, handling, and preparation for

market, or for delivery to storage or to market or to a carrier for transportation to market, of evergreen trees for eventual sale as Christmas trees (Christmas tree farming).[✓] Accordingly, under DWD's rules, as affected by the bill, a minor 14 years of age or over may be employed in[✓] Christmas tree farming by an employer that is not engaged in interstate commerce in excess of the maximum hours per week set by DWD by rule during peak periods. For employers engaged in interstate commerce, however, the maximum hours established under the FLSA continue to apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 103.64 (1)[✓] of the statutes is created to read:

2 103.64 (1) "Agriculture"[✓] has the meaning given in 29 USC 203 (f).
3 "Agriculture" also includes the planting, cultivating, growing, harvesting, handling,
4 and preparation for market, or for delivery to storage or to market or to a carrier for
5 transportation to market, of evergreen trees for eventual sale as Christmas trees.

6 SECTION 2. 103.67 (2) (e) of the statutes is amended to read:

7 103.67 (2) (e) Minors 12 years of age or older may be employed in agricultural
8 pursuits agriculture.[✓]

History: 1971 c. 271, 307; 1973 c. 183; 1979 c. 234; 1985 a. 126; 1989 a. 126; 1993 a. 492; 1995 a. 352; 1999 a. 164.

9 SECTION 3. 103.70 (1) of the statutes is amended to read:

10 103.70 (1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31,
11 103.78, 938.245 (2) (a) 5. b., 938.32 (1t) (a) 2.,[✓] and 938.34 (5) (b) and (5g) (c), and as
12 may be provided under s. 103.79, a minor, unless indentured as an apprentice in
13 accordance with s. 106.01, or unless 12 years and over and engaged in agricultural
14 pursuits agriculture,[✓] or unless 14 years and over and enrolled in a youth
15 apprenticeship program under s. 106.13, shall not be employed or permitted to work
16 at any gainful occupation or employment unless there is first obtained from the
17 department or a permit officer a written permit authorizing the employment of the

1 minor within those periods of time stated in the permit, which shall not exceed the
2 maximum hours prescribed by law.

History: 1971 c. 271; 1973 c. 59; 1979 c. 234; 1987 a. 187; 1993 a. 437; 1995 a. 27, 352.

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2619/

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2
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2001 BILL

or at a nursery ✓

Regen

- 1 AN ACT *to amend* 103.67 (2) (e) and 103.70 (1); and *to create* 103.64 (1) of the
2 statutes; **relating to:** the hours that a minor 14 years of age or over may be
3 employed in Christmas tree farming.

Analysis by the Legislative Reference Bureau

Under the current state child labor law, the department of workforce development (DWD) may fix maximum hours of employment for minors per day and per week. Under that authority, DWD has promulgated rules permitting a minor 12 to 15 years of age to work for four hours on a school day, eight hours on a nonschool day or on the last day of a school week, 18 hours during a school week, 24 hours during a week in which the minor's school is in session less than five days, and 40 hours during a nonschool week; and permitting a minor 16 or 17 years of age to work for five hours on a school day, eight hours on a nonschool day or the last day of a school week, 26 hours during a school week, 32 hours during a week in which the minor's school is in session less than five days, and 50 hours during a nonschool week; except that a minor 14 years of age or over may be employed in agricultural pursuits in excess of those maximum hours per week during peak periods.

Regulations issued under the federal Fair Labor Standards Act (FLSA), which governs employers that are engaged in interstate commerce, that is, employers that produce goods for sale outside their state and whose annual gross sales are \$500,000 or more, contain similar restrictions on the maximum hours that a minor may work and a similar exception for minors 14 years of age or over employed in agriculture. According to a Wage and Hour Opinion Letter issued by the federal secretary of labor,

BILL

and of "nursery stock," which is defined under current law to mean plants and plant parts that can be propagated or grown, for sale

however, that exception for employment in agriculture does not apply to work on a Christmas tree farm because Christmas trees are not agricultural commodities as that term is used in the definition of "agriculture" in the FLSA. *or at a nursery*

This bill defines "agriculture" for purposes of the state child labor law to include the planting, cultivating, growing, harvesting, handling, and preparation for market, or for delivery to storage or to market or to a carrier for transportation to market, of evergreen trees for eventual sale as Christmas trees (Christmas tree farming). Accordingly, under DWD's rules, as affected by the bill, a minor 14 years of age or over may be employed in Christmas tree farming by an employer that is not engaged in interstate commerce in excess of the maximum hours per week set by DWD by rule during peak periods. For employers engaged in interstate commerce, however, the maximum hours established under the FLSA continue to apply.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

eventual ✓
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

and of nursery stock, as defined in s. 94.10 (1)(f), for sale

SECTION 1. 103.64 (1) of the statutes is created to read:

103.64 (1) "Agriculture" has the meaning given in 29 USC 203 (f). "Agriculture" also includes the planting, cultivating, growing, harvesting, handling, and preparation for market, or for delivery to storage or to market or to a carrier for transportation to market, of evergreen trees for eventual sale as Christmas trees.

SECTION 2. 103.67 (2) (e) of the statutes is amended to read:

103.67 (2) (e) Minors 12 years of age or older may be employed in agricultural pursuits agriculture.

SECTION 3. 103.70 (1) of the statutes is amended to read:

103.70 (1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31, 103.78, 938.245 (2) (a) 5. b., 938.32 (1t) (a) 2., and 938.34 (5) (b) and (5g) (c), and as may be provided under s. 103.79, a minor, unless indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over and engaged in agricultural pursuits agriculture, or unless 14 years and over and enrolled in a youth

BILL

1 apprenticeship program under s. 106.13, shall not be employed or permitted to work
2 at any gainful occupation or employment unless there is first obtained from the
3 department or a permit officer a written permit authorizing the employment of the
4 minor within those periods of time stated in the permit, which shall not exceed the
5 maximum hours prescribed by law.

6

(END)

Barman, Mike

From: Barman, Mike
Sent: Thursday, April 12, 2001 9:24 AM
To: Newhouse, Chris
Subject: LRB-2619/2 (attached - per your request)

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

04/12/2001



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 6, 2001

MEMORANDUM

To: Senator Welch

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-2619 Child hours of labor exception for Christmas tree farms

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

_____ JACKET FOR ASSEMBLY ☒ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.